

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

TIMOTHY LIBERTUS.

Appellant

DOCKET NUMBER WD78288

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 24, 2016

Appeal From:

Circuit Court of Clay County, MO
The Honorable Larry D. Harman, Judge

Appellate Judges:

Division Three
Gary D. Witt, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

Attorneys:

Jeannie Willibey, Kansas City, MO

Counsel for Appellant

Attorneys:

Richard Starnes, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent, v.
TIMOTHY LIBERTUS, Appellant**

WD78288

Clay County

Before Division Three Judges: Witt, P.J., Newton, and Welsh, JJ.

Timothy Libertus appeals his convictions and sentences, following a jury trial, for forcible rape, forcible sodomy, and unlawful use of a weapon, for which he was sentenced as a "dangerous offender" to two consecutive 100-year prison sentences and one concurrent three-year sentence, respectively.

Affirmed; remanded for resentencing.

Division Three holds:

The circuit court erred in pronouncing Libertus a dangerous offender, pursuant to section 558.021, because the statutorily prescribed procedures to make such a finding were not properly observed. The circuit court judge sentenced Libertus under the erroneous belief that he was a dangerous offender; consequently, the cause must be remanded for resentencing.

The circuit court did not err in admitting an exhibit that the State introduced to prove that Timothy Libertus is a "prior offender." The document complied with the statutory requirements for out-of-state records; thus, the court did not err in relying on them to find that Libertus is a prior offender.

The circuit court did not plainly err in sustaining the State's hearsay objection to certain testimony from a forensic nurse examiner. Libertus does not demonstrate that excluding this testimony had any effect on the verdict, let alone an outcome-determinative effect; thus, he fails to demonstrate a manifest injustice or miscarriage of justice as to that issue.

Libertus's convictions are affirmed, but the cause is remanded for resentencing.

Opinion by James Edward Welsh, Judge

May 24, 2016

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